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10/530,594

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Daniel Lecomte

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EXAMINER

POPHAM, JEFFREY D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,594

Applicant(s)

LECOMTE ET AL.

Examiner

JEFFREY D. POPHAM

Art Unit

2437

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-69 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 43-69 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Remarks

Claims 43-69 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/2009 has been entered.

Response to Arguments

2. Applicant's arguments filed 5/26/2009 have been fully considered but they are not fully persuasive.

Applicant argues that Kalra does not disclose or suggest the claimed "modified stream" that "stream is distorted with respect to the original audio stream by modifying, replacing, substituting, and/or moving at least one element of an audio block of the original audio stream." It is first noted that the above merely means that at least one bit is modified, replaced, substituted, or moved within the original audio stream in creating the modified stream and complementary information. It could also be that the entire original stream is modified, replaced, substituted, or moved, or any portion thereof. This is clearly found within Kalra. As an example, Kalra, column 2, lines 30-34 reads "A

base stream containing basic informational content and subsequent streams containing additive informational content are initially created from standard digital multimedia by a transcoder." This sentence clearly shows at least moving of at least one bit, since the standard multimedia is split into a base stream and subsequent streams. This is further shown, for example, in column 3, line 66 to column 4, line 6, showing conversion of standard multimedia data 12 into adaptive streams "which are created so that subsets of the digital data that allow for distortion free reproduction of images and sounds at different resolutions". Further still, column 5, lines 25-29 reads "With respect to the audio sequence 27, different adaptive audio streams are created, with mono being a base channel, and stereo and quadraphonic channels being additive. Further, sounds can be oversampled to even further subdivide such audio streams." Seen here is that the streams obtained by transcoding the original audio data will include a base stream with sound related to a mono channel, and additive channels including additional channels and/or additional sampling of the original sound data. This clearly and explicitly shows that the stream is distorted with respect to the original audio stream by "modifying, replacing substituting, and/or moving at least one element of an audio block of the original audio stream" since all but the mono channel are moved out of the base stream into additive streams.

Upon reviewing the instant applicant's specification, the Examiner has provided a new ground of rejection with respect to claims 55 and 61, in order to better show that which Applicant describes in the application as being related to claims 55 and 61.

Applicant argues, with respect to claim 47, that there is no discussion of any user profile whatsoever in Saunders. It is noted that Kalra already provides for a profile, and that one of ordinary skill in the art would note the correlation between the profile of Kalra and the designation of rights and/or license, for example, of Saunders in that both are used to provide appropriate data to the user.

Applicant argues, with respect to claim 68, that Kalra discusses that the profile is associated with a multimedia device and, therefore, cannot be on a smart card because a smart card is different from the device. One will readily note that being associated with a device and there being a requirement that something must be stored on the device are entirely separate. Kalra does discuss that the profile, or a portion thereof, may be stored on the device, but does not limit this profile from being stored elsewhere in addition to or in place of the device. One of ordinary skill in the art will readily recognize the benefits of providing such a profile as described in Kalra in a smart card, so as to protect the profile from unauthorized access and/or to provide any of various other benefits.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 64 and 67-69 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 64 is directed to "An apparatus for receiving transmitted audio information, comprising: a synthesis

system..." configured to do various things. This synthesis system, however, is not described in the application as being hardware, software, or anything more specific than a "system" ("system" is not described in such a manner either). Therefore, this synthesis system could be purely software. As this is an apparatus claim, there must be some physical component of the claim in order to make it an apparatus (or machine). Since this claim has no inherently physical components (the synthesis system is not described in the application as comprising hardware, as described above), the claim is not statutory. Dependent claims 65 and 66 do, however, add hardware ("a playback device" and "at least one buffer memory", respectively) to the apparatus. Therefore, claims 65 and 66 are statutory. Claim 67, however, is not statutory for the same reasons as claim 64, in that claim 67 merely adds "means for coupling a smart card to the synthesis system"; such means not being described as hardware. Claim 68 adds no physical components to claim 67 and is also non-statutory. Claim 69 merely provides for additional description regarding the complementary information and, therefore, is also non-statutory for providing no hardware in an apparatus claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 43-46, 49, 53, 56-57, 63-66, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalra (U.S. Patent 5,953,506).

Regarding Claim 43,

Kalra discloses a method of transmitting audio information, the method comprising:

Modifying an original audio stream into a modified stream and complementary information, wherein a format of the modified stream corresponds to a format of the original audio stream, wherein the modified stream is distorted with respect to the original audio stream by modifying, replacing, substituting, and/or moving at least one element of an audio block of the original audio stream, and wherein the complementary information provides information to permit a decoder to reconstitute the original audio stream from the modified stream (Abstract; Column 1, line 66 to Column 2, line 49; and Column 3, line 66 to Column 4, line 32; such teachings having been discussed above in the response to arguments);

Transmitting the modified stream to target equipment (Column 4, lines 14-46); and

Transmitting at least a subset of the complementary information to the target equipment (Column 4, lines 14-46).

Regarding Claim 56,

Claim 56 is a system claim that corresponds to method claim 43 and is rejected for the same reasons.

Regarding Claim 44,

Kalra discloses that transmitting at least a subset of the complementary information to the target equipment comprises accessing a data profile of the target equipment; and determining, based on the data profile, the subset of the complementary information to be transmitted to the target equipment (Abstract; Column 1, line 66 to Column 2, line 49; and Column 3, line 66 to Column 4, line 59).

Regarding Claim 57,

Claim 57 is a system claim that corresponds to method claim 44 and is rejected for the same reasons.

Regarding Claim 45,

Kalra discloses that the data profile comprises at least one component relating to the target equipment and selected from the group consisting of payment data, preferences, environment, habits, and characteristics (Column 4, lines 47-59).

Regarding Claim 46,

Kalra discloses that at least a portion of the data profile resides at the target equipment (Column 16, lines 18-28).

Regarding Claim 49,

Kalra discloses that transmitting the modified stream and transmitting at least a subset of the complementary information utilize a

common transmission medium (Column 4, lines 14-59; and Column 5, lines 25-29).

Regarding Claim 53,

Kalra discloses reconstituting, at the target equipment, an audio stream using the modified stream and at least a subset of the complementary information (Column 4, lines 14-46).

Regarding Claim 63,

Kalra discloses that the audio information server further comprises at least one output buffer memory coupled to receive at least the modified stream from the analysis system (Figures 13-14; and Column 4, lines 14-59).

Regarding Claim 64,

Kalra discloses an apparatus for receiving transmitted audio information, comprising:

A synthesis system configured to receive a modified stream and at least a subset of a set of complementary information, wherein the modified stream and the complementary information are derived from an original audio stream, and to synthesize a reconstituted audio stream, wherein a format of the modified stream corresponds to a format of the original audio stream, wherein the modified stream is distorted with respect to the original audio stream by modifying, replacing, substituting, and/or moving at least one element of an audio block of the original audio stream, and

wherein the complementary information provides information to permit a decoder to reconstitute the original audio stream from the modified stream (Abstract; Figures 12-14; Column 1, line 66 to Column 2, line 49; Column 3, line 66 to Column 4, line 59; Column 14, line 61 to Column 15, line 32; and Column 15, line 66 to Column 17, line 17).

Regarding Claim 65,

Kalra discloses a playback device coupled to the synthesis system to receive the reconstituted audio stream and to play corresponding audio on a listening device (Column 1, line 66 to Column 2, line 49; Column 3, line 66 to Column 4, line 59; and Column 15, line 51 to Column 16, line 17).

Regarding Claim 66,

Kalra discloses at least one buffer memory to receive and store the modified stream or the received at least a subset of the set of complementary information, wherein the at least one buffer memory is coupled to the synthesis system (Figure 24; and Column 24, line 50 to Column 25, line 6).

Regarding Claim 69,

Kalra discloses that the complementary information includes at least one function to be used by the synthesis system to synthesize the reconstituted audio stream from the modified stream and the at least a

subset of the complementary information (Abstract; Column 1, line 66 to Column 2, line 49; and Column 3, line 66 to Column 4, line 59).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 47, 48, 50-52, 58, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalra in view of Saunders (U.S. Patent 7,290,057).

Regarding Claim 47,

Kalra does not explicitly disclose that the data profile includes an indication of rights of a user to access content of the original audio stream.

Saunders, however, discloses that the data profile includes an indication of rights of a user to access content of the original audio stream (Column 12, lines 36-61). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the media delivery system of Saunders into the scalable media delivery system of Kalra in order to allow the system to distribute different portions of a stream via different communication means, provide additional scalability factors, such as language, and/or only allow usage of content to authorized entities.

Regarding Claim 48,

Kalra does not explicitly disclose that transmitting the modified stream comprises storing the modified stream on a physical storage medium.

Saunders, however, discloses that transmitting the modified stream comprises storing the modified stream on a physical storage medium (Column 15, lines 20-31). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the media delivery system of Saunders into the scalable media delivery system of Kalra in order to allow the system to distribute different portions of a stream via different communication means, provide additional scalability factors, such as language, and/or only allow usage of content to authorized entities.

Regarding Claim 58,

Claim 58 is a system claim that corresponds to method claim 48 and is rejected for the same reasons.

Regarding Claim 50,

Kalra does not explicitly disclose that transmitting the modified stream and transmitting at least a subset of the complementary information utilize separate transmission media.

Saunders, however, discloses that transmitting the modified stream and transmitting at least a subset of the complementary information utilize

separate transmission media (Column 4, lines 42-62; Column 6, lines 28-55; and Column 13, lines 20-50). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the media delivery system of Saunders into the scalable media delivery system of Kalra in order to allow the system to distribute different portions of a stream via different communication means, provide additional scalability factors, such as language, and/or only allow usage of content to authorized entities.

Regarding Claim 51,

Kalra does not explicitly disclose that transmitting at least a subset of the complementary information utilizes a transmission medium different from that used for transmitting the modified stream.

Saunders, however, discloses that transmitting at least a subset of the complementary information utilizes a transmission medium different from that used for transmitting the modified stream (Column 4, lines 42-62; Column 6, lines 28-55; and Column 13, lines 20-50). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the media delivery system of Saunders into the scalable media delivery system of Kalra in order to allow the system to distribute different portions of a stream via different communication means, provide additional scalability factors, such as language, and/or only allow usage of content to authorized entities.

Regarding Claim 52,

Kalra as modified by Saunders discloses the method of claim 51, in addition, Saunders discloses that the transmission medium utilized for transmitting at least a subset of the complementary information is selected from the group consisting of an analog telephone line, a digital telephone line, a digital subscriber line, a local radio loop, a digital audio broadcasting channel, a commutated telephone network, and a wireless digital telecommunication network (Column 19, lines 12-40).

Regarding Claim 59,

Claim 59 is a system claim that is broader than method claim 52 and is rejected for the same reasons.

6. Claims 54 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalra in view of Blacketter (U.S. Patent 6,938,270).

Regarding Claim 54,

Kalra does not explicitly disclose that the complementary information includes at least one function to be used by the target equipment to reconstitute an audio stream from the modified stream and the at least a subset of the complementary information.

Blacketter, however, discloses that the complementary information includes at least one function to be used by the target equipment to reconstitute an audio stream from the modified stream and the at least a

subset of the complementary information (Abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the script trigger system of Blacketter into the scalable media delivery system of Kalra in order to allow for interaction between an information resource and a user, provide a user with relevant information concerning the user's interests, and/or allow the system to keep such information up to date without the need to connect to the Internet or wait for the selected channel to deliver the latest information.

Regarding Claim 60,

Claim 60 is a system claim that corresponds to method claim 54 and is rejected for the same reasons.

7. Claims 55 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalra in view of Bantz (U.S. Patent 6,807,542).

Regarding Claim 55,

Kalra discloses that transmitting at least a subset of the complementary information comprises transmitting all of the complementary information to the target equipment (Figures 15B2A-12B2D, 8/8 column; and Column 16, line 49 to Column 17, line 60; showing transmission of all additive streams; although one of ordinary skill in the art would understand that this could occur at the start of transmission, it does not appear to be explicitly recited); and decreasing,

over time, the amount of complementary information being transmitted to the target equipment (Column 25, lines 7-22; showing reduction of detail of transmitted data, which would result in the decrease of additive streams being sent); but does not explicitly disclose initiating communication of the information by transmitting all of the complementary information.

Bantz, however, discloses initially transmitting all of the complementary information to the target equipment (Column 3, lines 46-51; providing maximum service level, corresponding to all complementary information, for a limited period of time); and

Decreasing, over time, the amount of complementary information being transmitted to the target equipment (Column 3, line 66 to Column 4, line 11; gradually reducing the user's rights and, thus the amount of complementary information, over time). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the selective and quantitative rights management system of Bantz into the scalable media delivery system of Kalra in order to entice a user to renew or purchase a service or piece of data by gradually decreasing the quality of data that the user receives until such purchase or renewal is provided.

Regarding Claim 61,

Claim 61 is a system claim that corresponds to method claim 55 and is rejected for the same reasons.

8. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kalra in view of DeLeon (U.S. Patent Application Publication 2002/0064285).

Kalra does not explicitly disclose an audio coder, coupled to the audio information server, and configured to accept an analog audio stream and to convert the analog audio stream to a digital audio stream to be used by the audio information server as the original audio stream.

DeLeon, however, discloses an audio coder, coupled to the audio information server, and configured to accept an analog audio stream and to convert the analog audio stream to a digital audio stream to be used by the audio information server as the original audio stream (Abstract; and Paragraphs 23 and 32). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the analog/digital conversion system of DeLeon into the scalable media delivery system of Kalra in order to allow the system to transmit media in a digital and compressed format, even if the input media is analog, thereby providing high quality audio while conserving bandwidth.

9. Claims 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalra in view of Yoon (U.S. Patent Application Publication 2003/0061239).

Regarding Claim 67,

Kalra does not explicitly disclose means for coupling a smart card to the synthesis system.

Yoon, however, discloses means for coupling a smart card to the synthesis system (Paragraphs 32-36). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the user profile system of Yoon into the scalable media delivery system of Kalra in order to allow the system to securely store the profile on a smart card of the user, provide additional information within the profile with respect to preferences, history of usage, and authorization, and/or to ensure that the user is authorized to access content before allowing access to such content.

Regarding Claim 68,

Kalra as modified by Yoon discloses the apparatus of claim 67, in addition, Kalra discloses that the data profile to be used to determine a quantity of complementary information to be received by the apparatus (Abstract; and Column 3, line 66 to Column 4, line 59); and Yoon discloses that smart card is configured with a data profile (Paragraphs 32-36).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY D. POPHAM whose telephone number is (571)272-7215. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571)272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey D Popham
Examiner
Art Unit 2437

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